



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

CESPK-RDI-N

1 July 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),<sup>1</sup> SPK-2020-00664.

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>2</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>3</sup>

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

- a. The review area is comprised of eight non-relatively permanent waters totaling 14,674 linear feet and twelve upland swales with no primary ordinary high water mark (OHWM) indicators totaling 6,100 linear feet that are not jurisdictional.

## 2. REFERENCES.

- a. “Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023) (“2023 Rule”)
- b. “Revised Definition of ‘Waters of the United States’; Conforming” 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The approximately 232-acre review area is located in Las Vegas, Clark County, Nevada off of State Road 160. The approximate center coordinates of the review area are 36.027764°N, -115.297539°W. The survey area lies between two regional flood control facilities. A previous stand-alone AJD was requested and processed on 05 April 2021 under the Navigable Waters Protection Rule. All aquatic resources in that AJD request were classified as ephemeral and found to be non-jurisdictional.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest downstream interstate water to which the aquatic resources are connected to is Lake Mead (reference 2.d).

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. The upland swales and non-relatively permanent waters within the review area collect into the Blue Diamond Wash. Blue Diamond Wash flows into Tropicana Wash, then Flamingo Wash, then Las Vegas Wash, then finally into Lake Mead (Enclosure 1).

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: There are no aquatic resources or other features within the Review Area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899.

7. SECTION 404 JURISDICTIONAL WATERS: There are no aquatic resources within the review area that meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court’s decision in *Sackett*.

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<sup>5</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as “navigable in law” even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
- b. The Territorial Seas (a)(1)(ii): N/A
- c. Interstate Waters (a)(1)(iii): N/A
- d. Impoundments (a)(2): N/A
- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

<b>Table 1. Non-Relatively Permanent Tributaries of a TNW</b>		
Channel ID	Linear Feet	Local Waterway
Blue Diamond Wash	12,200	Flamingo Wash
AR-1	1,637	Blue Diamond Wash
AR-2	292	Blue Diamond Wash
AR-3	59	Blue Diamond Wash
AR-4	266	Blue Diamond Wash
AR-5	131	Blue Diamond Wash
AR-6	46	Blue Diamond Wash
AR-7	43	Blue Diamond Wash

<b>Table 2. Depressional Features that lack OHWM or Wetland Indicators</b>		
Channel ID	Linear Feet	Local Waterway
UP-1	213	AR-1
UP-2	272	AR-1
UP-3	708	Blue Diamond Wash
UP-4	49	AR-2
UP-5	154	Blue Diamond Wash
UP-6	495	Blue Diamond Wash
UP-7	633	Blue Diamond Wash
UP-8	945	Blue Diamond Wash
UP-9	1775	Blue Diamond Wash
UP-10	59	UP-9
UP-11	89	UP-9
UP-12	708	Blue Diamond Wash

Aquatic resources identified in Table 1 are tributaries of a TNW but are not relatively permanent, standing or continuously flowing bodies of water. As such, these aquatic

resources do not meet the terms of a paragraph (a)(3) tributary. No other paragraph would apply to these aquatic resources.

Aquatic resources identified in Table 2 are depressional features that do not contain any wetland or OHWM indicators. These aquatic resources are not relatively permanent, standing or continuously flowing bodies of water and do not meet the terms of a paragraph (a)(3) tributary. No other paragraph would apply to these aquatic resources.

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

a. A desktop review and investigation was performed on June 24, 2024, utilizing the following information:

b. [REDACTED] March 2024. "Aquatic Resources Delineation Report – Blue Diamond Wash".

c. USGS National Hydrography Dataset Plus High Resolution (NHDPlus HR) for 4-digit Hydrologic Unit – 1501, 2018. Accessed June 24, 2024.  
(<https://www.usgs.gov/national-hydrography/nhdplus-high-resolution>)

10. OTHER SUPPORTING INFORMATION. The provided document titled "Aquatic Resources Delineation Report – Blue Diamond Wash" prepared by [REDACTED] provided enough details to justify delineating a classifying eight non-relatively permanent waters and twelve upland swales. The National Hydrography Dataset Plus High Resolution (NHDPlus HR) was used to verify the flowpath of aquatic resources within the review area. NHDPlus HR was also used to calculate the stream order of Blue Diamond Wash. Blue Diamond Wash is a 6<sup>th</sup> order stream upstream of the review area until the 7<sup>th</sup> stream order Vegas Wash. The 6<sup>th</sup> order stream reach is approximately 22.14 linear miles. The majority of the 6<sup>th</sup> order stream reach is non-relatively permanent (Enclosure 1).

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Encl

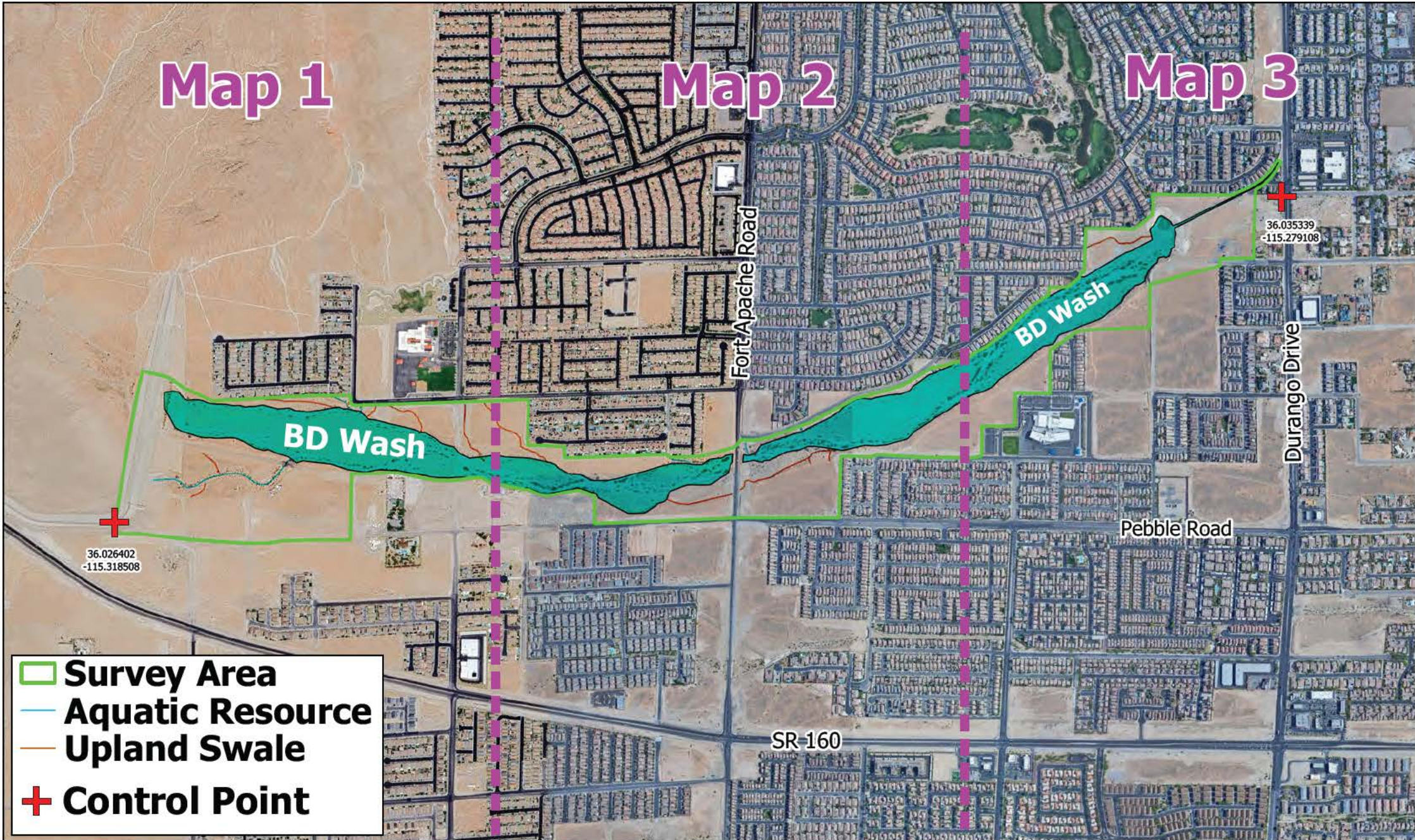
[REDACTED]



Map 1

Map 2

Map 3



## Blue Diamond Wash Aquatic Resources Overview



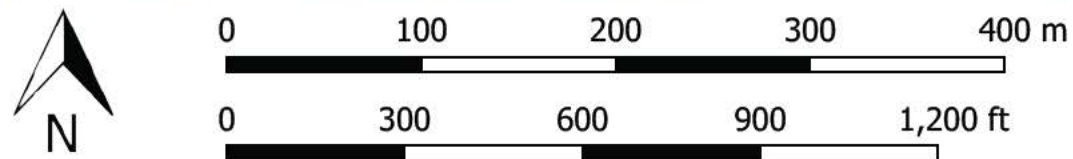
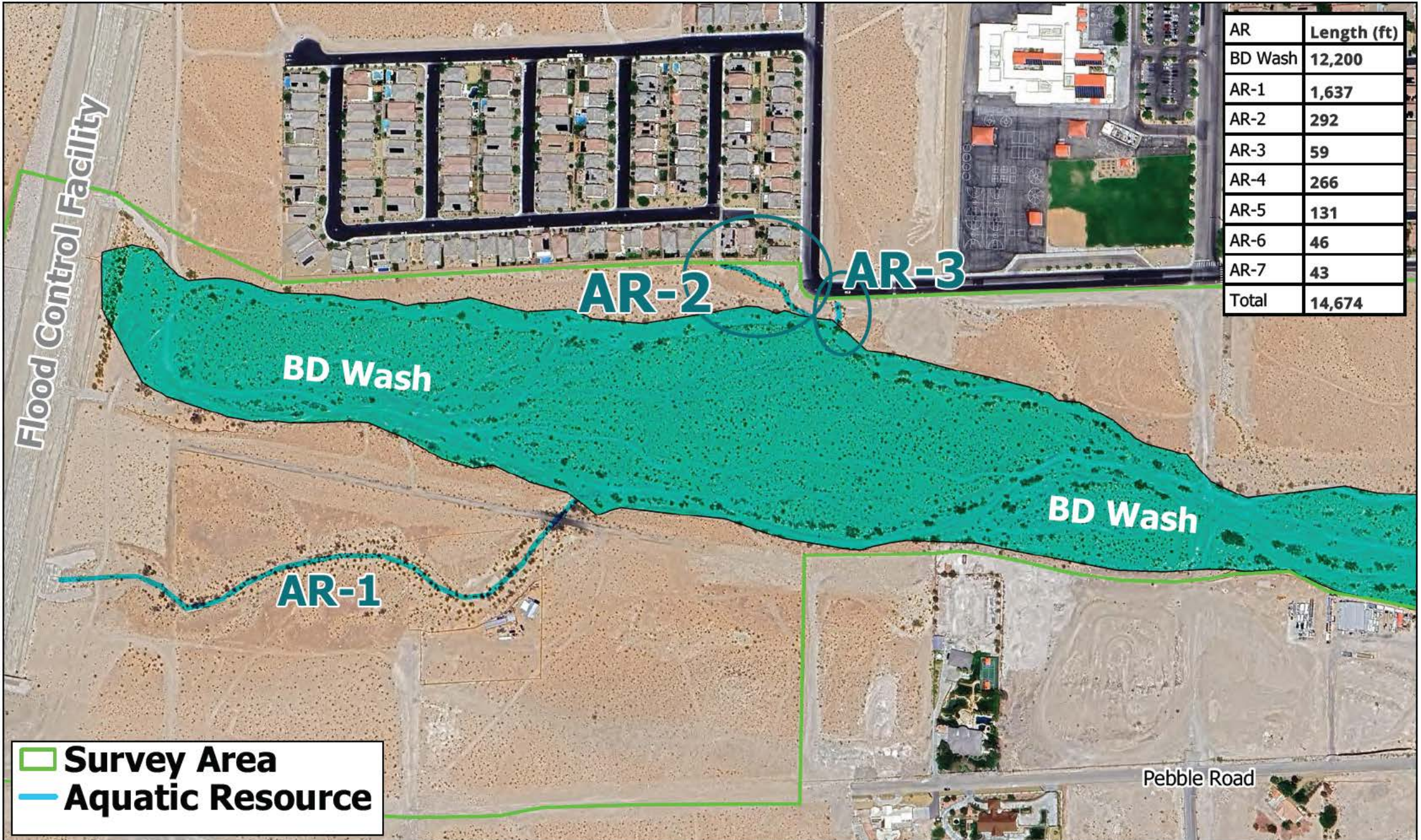
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Base Imagery: Google Earth

CRS: EPSG:3857

Map Made: 2/28/24 RP





Scale:  
1 inch = 400 feet

Base Imagery: Google Earth

CRS: EPSG:3857

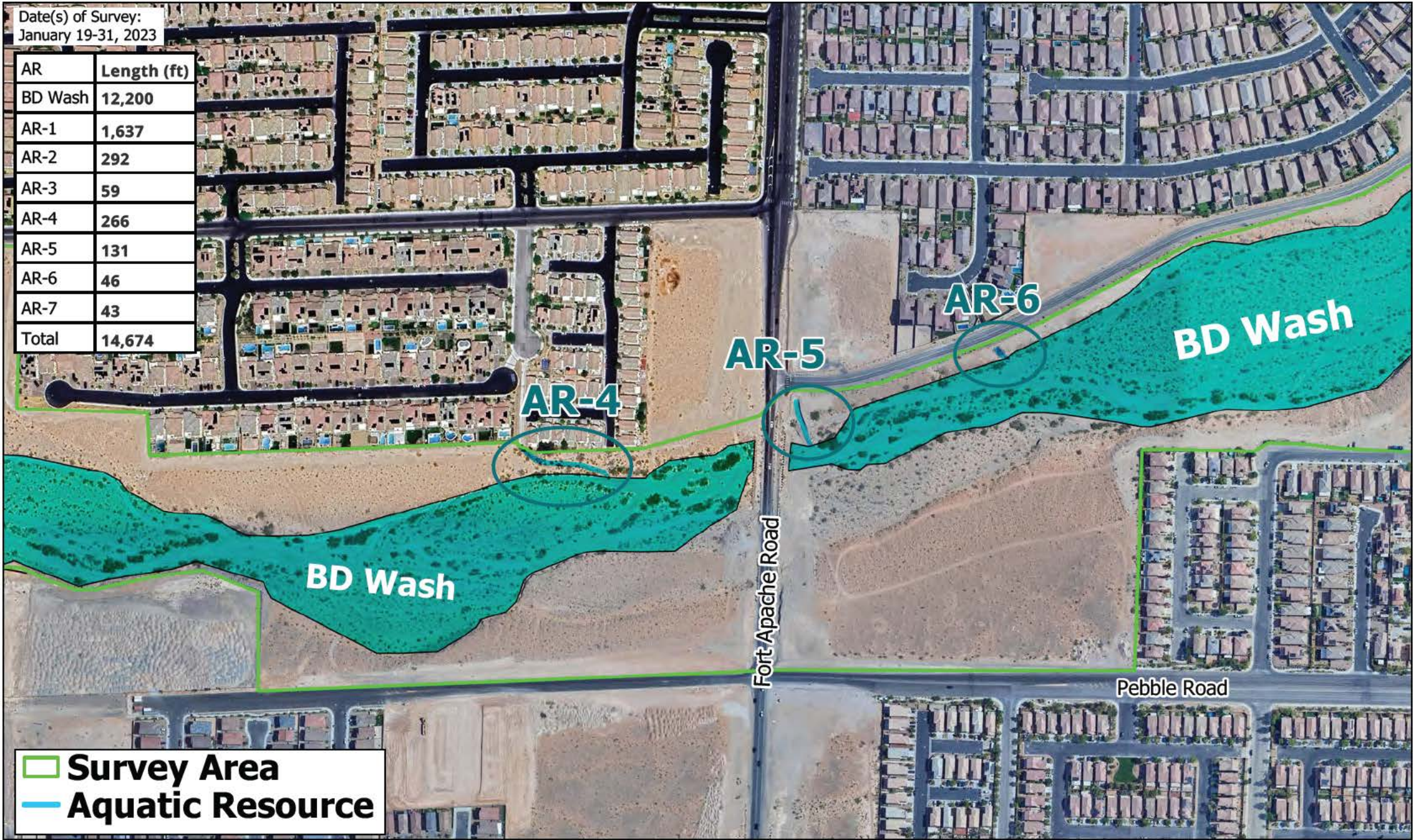
Map Made: 2/28/24 RP

Blue Diamond Wash  
Aquatic Resources Map 1

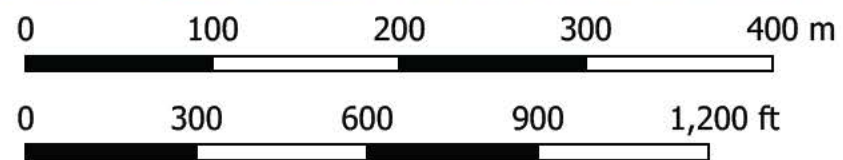


Date(s) of Survey:  
January 19-31, 2023

AR	Length (ft)
BD Wash	12,200
AR-1	1,637
AR-2	292
AR-3	59
AR-4	266
AR-5	131
AR-6	46
AR-7	43
Total	14,674



**Survey Area**  
 **Aquatic Resource**



Scale:  
1 inch = 400 feet

Base Imagery: Google Earth

CRS: EPSG:3857

Map Made: 2/28/24 RP

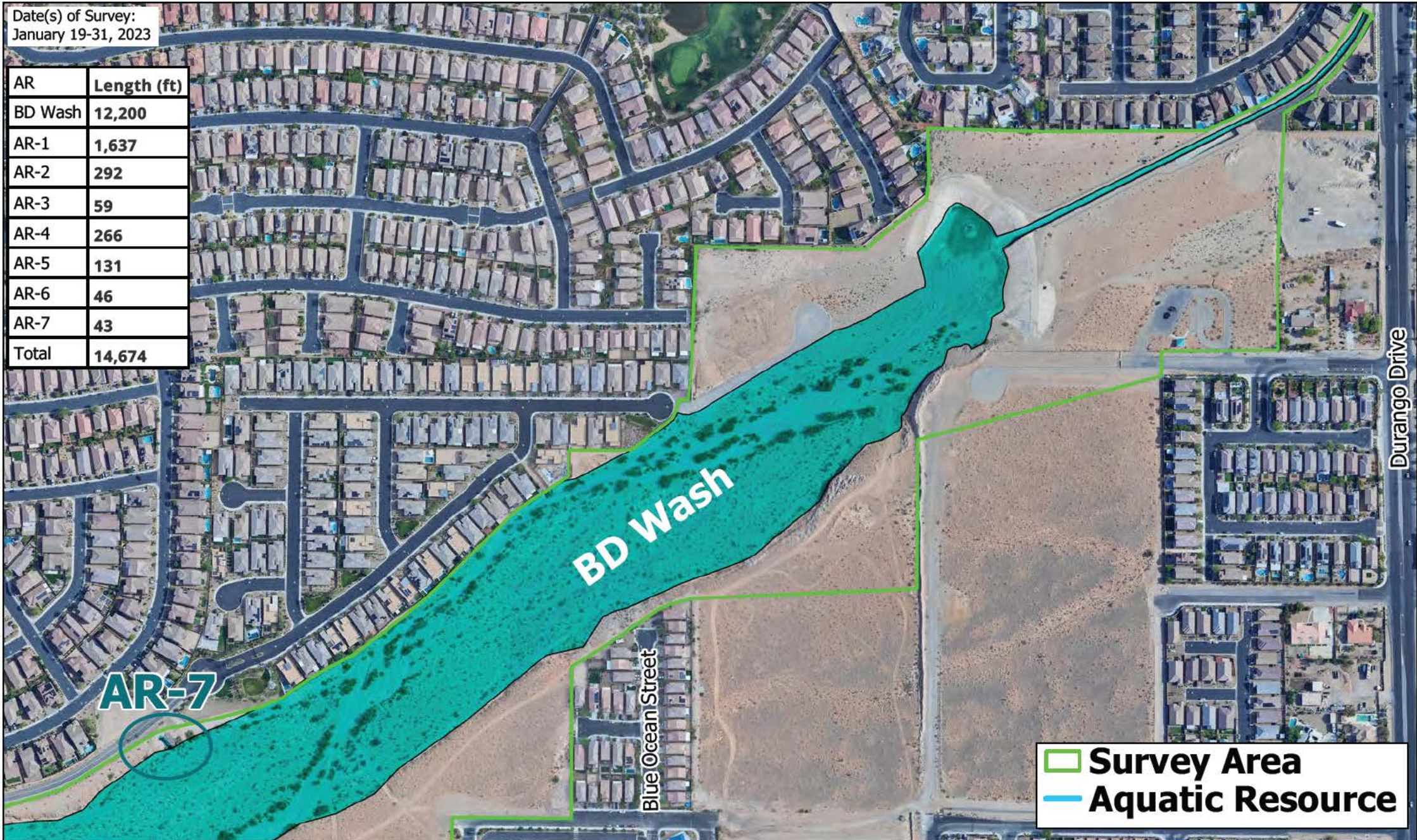
# Blue Diamond Wash Aquatic Resources Map 2





Date(s) of Survey:  
January 19-31, 2023

AR	Length (ft)
BD Wash	12,200
AR-1	1,637
AR-2	292
AR-3	59
AR-4	266
AR-5	131
AR-6	46
AR-7	43
Total	14,674



0 100 200 300 400 m

0 300 600 900 1,200 ft

Scale:  
1 inch = 400 feet

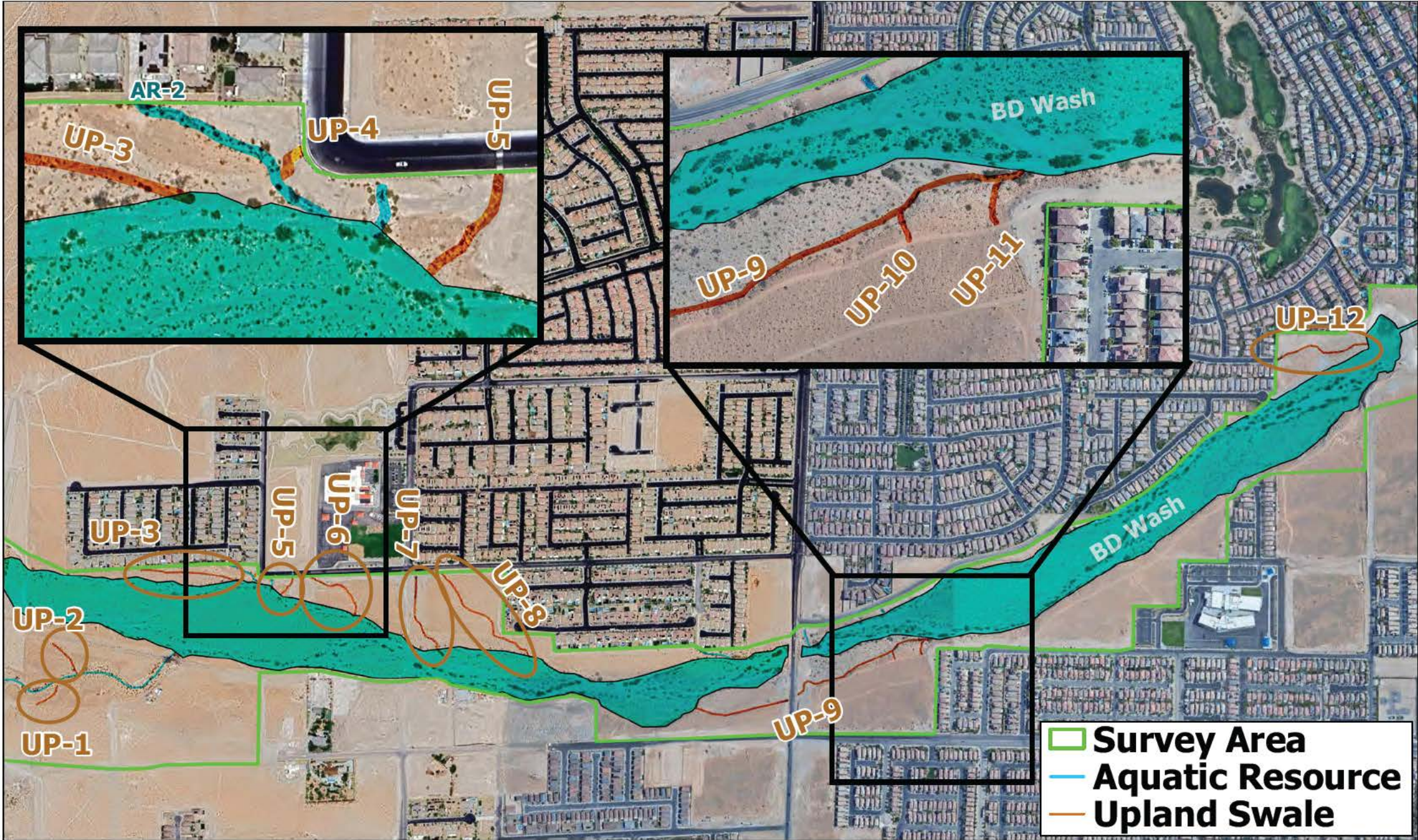
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CRS: EPSG:3857

Map Made: 2/28/24 RP

Blue Diamond Wash  
Aquatic Resources Map 3





Blue Diamond Wash  
Upland Swales